

### **REMARKS**

Applicant notes that all amendments and cancellations of Claims presented herein are made without acquiescing to any of the Examiner's arguments or rejections, and solely for the purpose of expediting the patent application process in a manner consistent with the PTO's Patent Business Goals (PBG),<sup>1</sup> and without waiving the right to prosecute the amended or cancelled Claims (or similar Claims) in the future. None of the claim amendments made herein are intended to narrow the scope of any of the amended claims within the meaning of *Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co.*, 234 F.3d 558, 56 USPQ2d 1865 (Fed. Cir. 2000) or related cases.

The specification has been objected to because applicants directed entry of the sequence listing at wrong location. Applicants herein request entry of the sequence listing following the abstract.

A corrected oath or declaration is attached herewith.

Claims 1-7, 9-10, 12-17, 27-33 35, and 37-37 are pending in the present application. Claims 8, 11, 34, and 36 have been cancelled.

1. Claims 1-17 and 27-38 stand rejected under 35 U.S.C. §112, first paragraph, as allegedly failing to comply with the enablement requirement;
2. Claims 1-17 and 27-38 are rejected as allegedly being indefinite;
3. Claims 1-10, 12-17, 27-35, 37-38 stand rejected under 35 U.S.C. §103 as allegedly being obvious.

These rejections are addressed in order below.

**1. The claims are enabled.**

Claims 1-17 and 27-38 stand rejected under 35 U.S.C. §112, first paragraph, as allegedly failing to comply with the enablement requirement. The claims have been amended to remove

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<sup>1</sup> 65 Fed. Reg. 54603 (Sept. 8, 2000).

the language referring to “cell product derived from” a sample. Thus, Applicants believe this rejection is now moot and request withdrawal of the pending rejection.

**2. The claims are definite.**

Claims 1-17 and 27-38 are rejected as allegedly being indefinite. The claims have been amended to respond to the Examiner’s various rejections. In particular, the claims have been amended to refer to: “facilitating the detection of” nucleic acids (Claim 1 and Claim 27); that the twenty copies are in the genome of the second species (Claims 3 and 29); a second “culture” of cells instead of sample (Claim 5); dependency on Claim 12 (Claim 13); and “culture” of cells instead of sample (Claims 16 and 17). Applicants request that this rejection be withdrawn.

**3. The claims are not obvious.**

Claims 1-10, 12-17, 27-35, 37-38 stand rejected under 35 U.S.C. §103 as allegedly being obvious. The Examiner has indicated at p. 13 that the prior art does not teach or suggest use of a primers or probes corresponding to SEQ ID NO:3 or 4. Thus, the claims as amended are free of the prior art. Applicants respectfully request withdrawal of this rejection.

**CONCLUSION**

All grounds of rejection and objection of the Office Action of July 5, 2007 having been addressed, reconsideration of the application is respectfully requested. It is respectfully submitted that the invention as claimed fully meets all requirements and that the claims are worthy of allowance. Should the Examiner believe that a telephone interview would aid in the prosecution of this application, Applicant encourages the Examiner to call the undersigned collect at (608) 218-6900.

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/John Mitchell Jones/  
John Mitchell Jones  
Registration No. 44,174

CASIMIR JONES S.C.  
440 Science Dr. Ste. 203  
Madison WI 53711